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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,424	07/02/2003	Burns Phillips	50243-0001	5198

7590 09/09/2004  
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EXAMINER
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COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/613,424

Applicant(s)

PHILLIPS ET AL.

Examiner

David Comstock

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities:

Paragraph 00011, line 2, "fit slide" should be changed to either --fit-- or --slide--, or otherwise corrected, to clearly reflect how the retractor clamps are positioned.

Paragraph 00013, line 10 (Brief Description of the Drawings), incorrectly describes Fig. 3b as "a back side plan view of the rack used in the retractor frame of Figure 3a." This contradicts paragraph 00020--where Figure 3a is described--lines 6-7 (Detailed Description of the Drawings), "The *rack 56* may be *substantially linear as illustrated, or could be curved as shown* in Figures 1, 2 and 3b" (emphasis added). If the illustrated rack **56** is linear, as this says, then Figure 3b cannot be a back side plan view of the frame of Figure 3a, since Figure 3b is described as being curved.

Appropriate correction is required.

Paragraph 00013, line 13 (Brief Description of the Drawings), after "Fig.", "4a" should be changed to --4b--.

Paragraph 00018, line 4, after "axes **44,46**", --is about 15 degrees,-- should be inserted.

Paragraph 00021, line 1, "has" should be changed to --have--.

Paragraph 00022, lines 2-3, ", illustrated as first arm 76 it is connected" renders the sentence incoherent. Appropriate correction is required.

Paragraph 00027, line 4, after "may", it appears that "act" should be deleted.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **206** (Fig. 17). In addition, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: **146** (Paragraph 00028, line 4) and **178** (Paragraph 00032, line 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 11 is objected to because of the following informalities: claim 11, line 1, after "to" --the-- should be inserted. Appropriate correction is required.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor 5,976,171).

Taylor discloses a retractor 310 comprising a laterally extending rack and first and second arms (see Figs. 13B and 16). For simplicity, reference will be made to only one of the arms, since both are the same. However, it is recognized that only one of the arms has a housing 332 slidably engaging the rack 312 and including an adjustment mechanism 324,326. The arms have a first segment, 330A,330B, a second segment, 360, and a third segment, 338. The segments are hinged together at 331 and 363. The middle segment of both arms is angled toward the other arm by virtue of the outwardly angled portion of the "Y" shape forming the middle segment (see Fig. 13B). A facet of this outwardly angled portion is visible on middle segment 362, and reference numeral 360 points directly at the opposite angled facet. The angles between the first and middle segments on each arm and between the middle and third segments on each arm are equal, as both segments are identical. The first segments of the arms are parallel both at their base (the base of the "Y", i.e. 364) and at portion 368A,368B (again referring only to one of the arms). The third segments are parallel to each other at least along a portion thereof. The same device 310 alternatively includes rotation means 30

for allowing the arms to rotate about a longitudinal axis, e.g. A2, (see Fig. 16 and col. 13, lines 4-17). Both arms are rotatable. It is also noted that when the first segment of an arm rotates, so does the middle segment and the third segment at the end of the arm. Rotation means 30 is operable to lock the middle segment at a desired angular orientation about axis A2 (id.).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (5,976,171) in view of Farley (4,989,587).

Taylor discloses the claimed invention except for providing both arms with a slidable housing and an adjustment mechanism. Farley discloses a retractor 19, wherein both arms 31 and 33 are provided with a slidable housing with an adjustment mechanism in order to facilitate independent movement and placement of the arms and allow a safer and more effective procedure (see Fig. 2; col. 1, lines 14-18; col. 4, lines 59-66; and col. 5, lines 16-19 and 33-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the retractor of Taylor with both arms having a slidable housing and an adjustment mechanism, in view of Farley, in order to facilitate independent movement and placement of the arms and allow a safer and more effective procedure.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (5,976,171).

Taylor discloses the claimed invention except for the locking means being a lever. However, levers and threaded clamps are prevalent and equivalent structures for applying a clamping force to an object, known in the art. Because these two locking means were known functional equivalents at the time of the invention, a person of ordinary skill in the art would have found it obvious to substitute a lever for a threaded clamp to apply clamping force.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (5,976,171) in view of Wright et al. (5,772,583).

Taylor discloses the claimed invention except for the rack having a domed shape. Wright et al. disclose a retractor 100 having a rack 110 provided with a dome shape to safely provide a natural surgical opening while not obstructing the surgeon's view of the work area (see Figs. 1-3; col. 1, line 16; col. 2, lines 12-18; and col. 3, lines 19-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the retractor of Taylor with a dome shape, in view of Wright et al., in order to safely provide a natural surgical opening while not obstructing the surgeon's view of the work area.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D. Comstock  
06 September 2004



EDUARDO C. ROBERT  
PRIMARY EXAMINER